

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1235 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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SUBHASHCHANDRA & BROTHERS

Versus

DHANJIBHAI MOHANBHAI PATEL  
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Appearance:

MR MB GANDHI for Petitioners  
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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 02/12/2000

ORAL JUDGEMENT

1. Subashchandra and Brothers and others,  
petitioners (original opponent Nos. 2 and 3), have filed  
this revision application challenging the order dated  
17.10.2000 passed by the learned judge, Small Causes  
Court No. 5, Ahmedabad, in Restoration Application No.  
377 of 2000 order below Exh. 1 wherein the learned judge

was pleased to allow the restoration application and set aside the order of dismissal of H.R.P. Suit No. 825 of 1990 passed on 10.7.2000 and H.R.P. Suit No. 825 of 1990 is restored to file.

2. The facts giving rise to this revision application are as under:

2.1 Shri Dhanjibhai Mohanbhai Patel, respondent No. 1 herein (original plaintiff) filed H.R.P. Suit No. 825 of 1990 against opponent No. 2 petitioner herein and others for seeking possession of City Survey No. 281, Municipal Cess No. 1183/1 in Madhupura area. That suit was dismissed for want of presence of plaintiff on 11.7.2000.

2.2 Thereafter restoration application No. 377 of 2000 was filed by respondent No. 1 on 24.7.2000. In the restoration application it was submitted by respondent No. 1 original plaintiff that his advocate Shri R.H. Rawal through whom the suit was filed. However, on 10.7.2000 the suit was posted for evidence of respondent No. 1. Respondent No. 1 informed the advocate to remain present before the court on 10.7.2000 but the advocate could not remain present in the court as he was suffering from heart trouble and the advocate informed respondent No. 1 that he would seek an adjournment on the ground of illness. Therefore, respondent No. 1 need not remain present in the court on 10.7.2000. That again on 11.7.2000 while contacting the advocate, respondent No. 1 learnt from the advocate that the clerk of the advocate had not given any information about the adjournment and he was asked to enquire in the evening when he came to know that the suit has been dismissed and then on the said cause of action, application for restoration of the suit was given by respondent No. 1.

2.3 The said restoration application was opposed by the present petitioner by filing reply Exh. 17. It was contended that such application is not maintainable under the provisions of law and the contention raised in the application were also challenged as not correct.

2.4 The learned judge after considering the evidence on record and submissions made by the learned advocate for respondent No. 1, observed that the original plaintiff should not be penalised for the act of his advocate and the court came to the conclusion that some applications were submitted by the applicant - respondent No. 1 herein and his advocate and some applications were submitted by some other lawyer who is not on record. The

court observed that it is pertinent to note that the matter was dismissed on 10.7.2000 and the present application was preferred within stipulated period of one month and the facts narrated by the applicant in the restoration application are proper and good ground to set aside the order and restore the matter to file.

3. Mr. Gandhi, learned advocate for the petitioners appeared and contended that the learned judge has failed to appreciate and consider that the suit is of 1990 and issues were framed long back even then, on the date when the suit was fixed for evidence of the plaintiff-respondent No. 1 herein neither the plaintiff appeared nor any application was given and therefore the order of dismissal was quite proper and in accordance with law. He also submitted that in the old suit if the plaintiff is not interested and if the advocate has not given any application then except dismissal of the suit, no order can be passed. He also submitted that if really the advocate was sick, he ought to have filed affidavit on record and without such affidavit, the contentions cannot be accepted.

4. I have considered the facts and circumstances of the case and also the submissions made by Mr. Gandhi, learned advocate for the petitioners in this behalf. However, in my view, the learned judge has considered the entire facts and circumstances and the original suit was dismissed on the ground of absence of the advocate of the plaintiff-respondent No. 1. Thereafter, the suit has been restored after the application was filed and considering the narration given in the application. In my view, the learned judge has exercised the discretion vested in him by law. I do not find any jurisdictional error committed by the learned in allowing the application for restoration of the suit. Therefore, I am of the opinion that the order of the learned judge is legal and proper. I do not see any reason to interfere with the order of the learned judge. The revision application is therefore rejected with no order as to costs.

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